

**ST 99-3**

**Tax Type: SALES TAX**

**Issue: Reasonable Cause on Application of Penalties**

**STATE OF ILLINOIS  
DEPARTMENT OF REVENUE  
OFFICE OF ADMINISTRATIVE HEARINGS  
CHICAGO, ILLINOIS**

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**THE DEPARTMENT OF REVENUE  
OF THE STATE OF ILLINOIS**

v.

**"WHATSAMATTAYU PIZZERIA".,**

Taxpayer

No. 98-ST-0000

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**RECOMMENDATION FOR DISPOSITION**

**Appearances:** Mr. "Luigi Abbondanza", pro se; Mr. Gary Stutland, Special Assistant Attorney General for the Department of Revenue.

**Synopsis:**

This matter arose as a result of the issuance of Assessment No. SB 00000000000000 on January 26, 19xx against "Whatsamattayu Pizzeria". The penalty assessment was issued under the provisions of 35 ILCS 120/4 as a result of the taxpayer having failed to file a single monthly return for October, 19xx on a timely basis. Following a request to abate the penalty for reasonable cause, the department issued its denial on August 26, 19xx, from which a timely protest was filed.

**Findings of Fact:**

1. The prima facie case of the department was established by the admission into evidence, without objection, of Department group exhibit No. 1, which consisted of pages of correspondence, copies of checks, change of address notifications and the assessment itself; (DOR grp. Ex. No. 1)
2. The taxpayer has been in business for approximately 8 years, and continues to conduct a retail food business as of the date of this hearing (Testimony, "Luigi Abbondanza");
3. Taxpayer is a monthly filer, filing sales tax returns and remitting payments each month of the calendar year for sales made during the previous month. (Testimony, "Luigi Abbondanza");
4. The representative for the department stipulated that this taxpayer has no other outstanding assessments;
5. There is no evidence that taxpayer has failed to file on a timely basis at any other time during the operation of its business;
6. The evidence of record shows that the return itself was sent to the department on a timely basis, but that it was not signed by the taxpayer, and consequently not "filed" as a matter of law;
7. When the department wrote to the taxpayer's accountant ("Dewey Cheatum", CPA) to advise him of the fact that the return was not signed, the department's letter did not reach Mr. "Cheatum" until March, 19xx because of a relocation of his office;

8. The taxpayer did not learn of his failure to sign the return submitted until long after the due date for the return.
9. The tax liability for the month of October, 19xx as indicated by the return submitted, was paid in full on November 7, 19xx, when it was due.

**Conclusions of Law:**

The penalty for the late filing of a monthly ROT return in this cause was imposed by the Department of Revenue pursuant to Section 3-3 of the Uniform Penalty and Interest Act. 35, ILCS 735/3-1, et seq.

Under the terms of 35 ILCS 735/3-8, "the penalties imposed under the provisions of 3-3, 3-4 and 3-5 of this Act shall not apply if the taxpayer shows that his failure to file the return or pay the tax at the required time was due to reasonable cause." Under the circumstances herein, it appears that such reasonable cause exists. From the state of the evidence derived at hearing, this taxpayer has an exemplary payment record. It has no outstanding assessments and there is nothing to lead me to believe that it has ever failed to file returns or pay requisite taxes on the business when due during the entire 8 years of its operation. The return itself was in fact submitted to the department on a timely basis, only unsigned. While this prevents it from being "filed" as a matter of law and makes a late filing penalty legally applicable, to overlook the fact that it was sent in and the taxes due paid on time, is to do an injustice to an otherwise honest taxpayer for what amounts to a simple oversight. The mistake was then compounded by the fact that taxpayer's accountant did not notify the department of the relocation of its offices, which delayed any correction of the error.

On the totality of circumstances herein, I find that reasonable cause exists to abate the penalty imposed and recommend that Assessment SB 00000000000000 be cancelled in its entirety.

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Richard L. Ryan  
Administrative Law Judge

Date: 2/4/99